IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.7.2009

CORAM

THE HON'BLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HON'BLE MR.JUSTICE RAJA ELANGO

Writ Appeal Nos.1367 to 1399 of 1998

W.P.No.1367 of 1998

M.Rajamanickam .. Appellant

Vs.

1. The Management of State Farm
Melchengam West Post
N.A.District.

2. The Presiding Officer
II Additional Labour Court
Madras 104. .. Respondents

Appeal against the order of the learned single Judge dated 1.8.1996 made in W.P.No.10524 of 1987 on the file of this Court.

For Appellant : Mr.Vijay Narayan
For Mr.J.Saravana Vel
For Respondent-1 : Mr.A.R.Gokulnath

J U D G M E N T
(Delivered by S.J.MUKHOPADHAYA,J.)

As all these appeals arise out of a common order, they were heard together and disposed of by this common judgment.

2. It appears that the appellants were working on daily wage basis in the State Farm Corporation of India Ltd. (hereinafter referred to as the "Corporation") as

agricultural Mates or Pump Operators or Helpers. The Management of the Corporation were dealing with agriculture. All the workers numbering more than 800 resorted to strike on 22.1.1981 raising various demands like wage increase, holidays, festival advance, filling up of vacant post, provident fund, etc. While they were on strike, a Settlement was reached between the Management and the Union of 27.4.1981 under Section 12(3) of the Industrial Disputes Act, 1947. By the said Settlement, provisions were made for provident fund, wages for weekly holiday, festival advance, re-employment

of workers etc. It was agreed upon that the Mates, Pump Operators and Helpers are not be to continued further, as per the orders issued by the Management of the Corporation at Delhi.

3. Pursuant to the Settlement, while all the other employees were taken back in service, appellants, who were Pump Operators and Helpers, having not taken back and thereby they have been retrenched from service, the Government of Tamil Nadu, by different Government Orders issued on 12.1.1984, made individual references in regard to each workman on the question whether non employment of 33 workers is justified; if not, to what relief they are entitled to.

4. The II Additional Labour Court, Madras, on hearing the parties and on appreciation of evidence, by common award dated 26.3.1987, having answered the award in favour of the workmen (appellants herein), held that non-employment (retrenchment) of the workmen was in violation of Section 25-F of the Industrial Disputes Act.

5. The Corporation challenged the common award before this Court by filing different writ petitions. The learned single Judge, by the impugned common order dated 1.8.1996, held that the award was bad and set aside the award on two grounds, viz. agricultural operation do not fall within the purview of Section 2(j) and thereby the Corporation cannot be termed as an 'industry' as defined under Section 2(j) of the Industrial Disputes Act; and in view of the Settlement reached under Section 12(3) of the Industrial Disputes Act, the workmen cannot raise an industrial dispute.

6. The learned counsel appearing on behalf of the appellant(s) submitted that the definition of 'industry' as noticed by the learned single Judge was never given effect to and thereby, the learned single Judge erred in coming to a conclusion that the Corporation do not fall within the definition of 'industry'. It was further submitted that a Settlement made under Section 12(3) do not cover the question of retrenchment.

7. The learned counsel appearing on behalf of the Corporation opposed the appeal on the following grounds:
(i) subsequent legislation can be looked at to ascertain proper interpretation to be put upon the earlier Act. Reliance is placed on the Supreme Court decision in State of Bihar v. S.K.Roy AIR 1966 SC 1995] and T.Manickam & Co. v. State of Tamil Nadu [AIR 1971 SC 518];
(ii) a Settlement under Industrial Disputes Act is binding on all the parties and no industrial dispute can be raised under Section 10 of the Act against the essence of such Settlement. In this regard, reliance is placed on the Supreme Court decision in Jaihind Roadways v. MRMT & General Kamgar Union [2005 III LLJ 1020 (SC)]; and
(iii) the workmen have failed to prove that they have completed 240 days of continuous service to derive advantage of Section 25F of the Industrial Disputes Act. Burden of proving continuous work for 240 days is on the workman and not on the Management. He relied upon the Supreme Court decisions in H.U.D.A. v. Jagmal Singh [2006 (5) Supreme 544 = (2006) 5 SCC 764] and Kanta (Smt.) (Deceased) through LRs. v. MTNL [2006 I LLJ 573 - Delhi] etc.

8. We have heard the learned counsel for the parties and perused the records.

9. It will be evident from the impugned order that the learned singe Judge noticed the so-called amended Section 2(j)(1) to come to a conclusion that the Corporation do not come within the definition of 'industry'. The following amendment was noticed as sub-Section 2(j)(1), which reads as under:
"any agricultural operation, except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this Clause) and such other activity is the predominant one.

Explanation:- For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951)".

10. The question as to whether an agricultural industry falls within the definition of 'industry', fell for consideration before different Courts from time to time.

11. In the Bombay Industrial Relations Act, 1946, 'agriculture' and 'agricultural operations' have been specifically included in Section 3(9) in the definition of 'industry'. But, in the Industrial Disputes Act, 1947, 'agriculture' has neither been included nor excluded.

12. In D.N.Banerji v. P.R.Mukherjee [(1953) 1 LLJ 195 (SC) = AIR 1953 SC 58], the Supreme Court observed that non-technical and ordinary meaning of 'industry' is 'an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc', and for making profits, an industry in this sense, includes agriculture, horticulture, etc.

13. In Harinagar Cane Farm v. State of Bihar [(1963) 1 LLJ 692 (SC) = AIR 1964 SC 903], the Court left the question, whether all agriculture and operations connected with it are included within the definition of industry or not, undecided. But, on the facts of the case, the activities of the two companies registered under the Indian Companies Act, which were engaged in 'agricultural operations', i.e., one for production of sugarcane, wheat, paddy and other articles for sale in the market, to the consumers, and the other producing sugarcane for use in its sugar factories, were held to be falling within the definition of industry, because the companies had invested capital for carrying on their 'agricultural operations' for the purpose of making profit and the workmen employed by them in the respective operations, contributed for the production of agricultural commodities, which brought in profit to the Companies.

14. In Bangalore Water Supply and Sewerage Board v. A. Rajappa [1978 Lab IC 467 (SC) = AIR 1978 SC 548 = (1978) 1 LLJ 349], the Supreme Court held that any activity connected with 'agriculture' or 'agricultural operations' affecting 'industrial and labour disputes' or 'welfare of labour', might fall within the ambit of industry, if it satisfies the following triple test laid down therein.
" 'Industry' as defined in S.2(j) and explained in Banerji (AIR 1953 SC 58) has a wide import.
(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or food) prima facie, there is an industry in that enterprise.
(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
(d) If the organization is a trade or business it does not cease to be one because of philanthrophy animating the undertaking."

15. The Labour Court, having noticed that the activities connected with the agriculture and agricultural operations will effect industrial and labour dispute, came to a definite conclusion that the activities of the Corporation at Melchengam amounts to an 'industry'. The learned single Judge altered such finding only on the basis of so-called definition of industry said to have been made under Section 2(j)(1). In fact, after the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa, a pragmatic definition was attempted in the Industrial Relations

Bill 1978, besides the Bill lapsed on the dissolution of the Parliament in August 1979. Subsequently, by Act 46 of 1982, Clause 2(j) was ordered to be substituted in the manner as quoted above. But the said provision was never given effect to and the meaning of an 'industry', as originally defined under Section 2(j), thereby continued, which reads as under:
"(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."
Section 2(j)(1) having never been given effect, we hold that the learned single Judge should not have relied upon the said provision to come to a different meaning of 'industry'.

16. In State of Bihar v. S.K.Roy AIR 1966 SC 1995], the Supreme Court held that when there is obscurity or ambiguity in the earlier Act, subsequent legislation can be looked at to ascertain proper interpretation to be put upon earlier Act.

17. In T.Manickam & Co. v. State of Tamil Nadu [AIR 1971 SC 518], similar view was taken by the Supreme Court that in case of ambiguous provision, for the purpose of proper construction, useful aid of subsequent amendment can be taken.

18. In the present case, as the subsequent amendment has never been given effect to and there is no ambiguity in the earlier definition of 'industry', we are of the view that there was no occasion for the learned single Judge to notice the subsequent definition to come to a different conclusion.

19. So far as the Settlement is concerned, it will be evident from the Settlement dated 27.4.1981 that the terms of Settlement relates to the following issues:
(i) Provident Fund;
(ii) Wages for weekly holiday;
(iii) Festival advance;
(iv) Filling up vacant post;
(v) Maternity Benefit Act;
(vi) Construction of houses for the workmen;

(vii) Wage increase;
(viii) National and Festival Holidays; and
(ix) Re-employment of workers.
None of the aforesaid terms of Settlement relates to non- employment, amounting to retrenchment. Therefore, the Corporation cannot derive advantage of the Settlement to deny the benefit of Section 25F to an employee.
From paragraph 10 the said Settlement, it will be evident that while the Settlement was made, that was the first time the Management decided to retrench the Mates, Pump Operators and Helpers, as evident from the relevant portion of paragraph 10 and quoted here under:
"The Management are very strong in holding that the categories of Mates, Pump Operators and Helpers cannot be continued any further as per the orders issued by their higher Ups in Delhi."

20. It is a settled law that effect of Settlement dispute between the workmen and the employer is binding on all the parties, including those who are not parties to the Settlement. Reliance was placed on the decision in Jaihind Roadways v. MRMT & General Kamgar Union [2005 III LLJ 1020 (SC)]. But, if the Settlement is against any provision of the Statute or Act or Constitution, one cannot derive advantage of the Settlement to deny the benefit, to which, an employee is entitled to under the Statute or Act or Constitution. A workman of an industry, if continuously work for more than 240 days in one calendar year and if he is retrenched from service without notice or notice pay, as stipulated under Section 25F, the Management cannot deny the benefit of Section 25F on the

ground of Settlement reached either under Section 12 or Section 18 of the Act.

21. The learned single Judge, having failed to notice the fact that the Settlement does not relate to non- employment amounting to retrenchment and that the Settlement cannot be used to deny the benefit under Section 25F, we have no other option, but to set aside the order passed by the learned single Judge.

22. The learned counsel appearing on behalf of the Corporation vehemently submitted that many of the workmen may not have completed 240 days in a calendar year and this matter has not been looked into. But, we are not inclined to accept such submission at this appellate stage, as no such argument was advanced either before the Labour Court or before the learned single Judge that one or other workman has not completed 240 days of service in one or other calendar year. Further, having accepted in the Bar by the learned counsel for the Corporation that the workmen were working since 1971 and 1972 and they were not allowed to work after 22.1.1981, viz. the day they proceeded on strike, it is very difficult to presume that one or other has not worked for 240 days in a particular calendar year.

23. In view of the discussion and finding as made above, we have no other option but to set aside the order dated 1.8.1996 passed by the learned single Judge and the same is accordingly, set aside. It is informed that the Corporation is functioning at Delhi, but has closed its agricultural farm at Melchengam. If it is so, the workmen will be entitled to the benefits which other similarly situated persons were allowed, in view of the award dated 26.3.1987 passed by the Labour Court.

In the result, the writ appeals are allowed with the above said observation. But, there shall be no order as to costs.

Index : Yes (S.J.M.J) (R.E.J.)
Internet : Yes 24.7.2009.

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To

The Presiding Officer
II Additional Labour Court
Madras 104.

S.J.MUKHOPADHAYA, J,
AND
RAJA ELANGO, J.

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